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No. 85-21

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

SQUARE D COMPANY AND BIG D BUILDING SUPPLY CORP.,
Petitioners,

v.

NIAGARA FRONTIER TARIFF BUREAU, INC., *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITIONERS' RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

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PETITIONERS' RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

On September 23, 1985, the respondent motor freight tariff bureau and its individual trucking company member respondents informed the Court that the Department of Transportation had proposed legislation which, if enacted without change, would deregulate further the Interstate Commerce Commission's supervision of motor carrier tariffs. On September 27, 1985 the American Trucking Association (ATA), through its chief executive officer, appeared before the Committee on Commerce, Science and Transportation of the

United States Senate and opposed passage of this legislation.*

ATA describes itself as "the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country." (App. p. 2) The ATA testimony informed the Congress:

> We believe that elimination of antitrust immunity for collective ratemaking and all powers of the Interstate Commerce Commission (ICC) to establish reasonable parameters on motor carrier services would have the following effects:

The testimony thereafter listed eleven ostensibly adverse effects on the trucking industry which would occur if the legislative proposal passed or passed without amendment. A copy of the relevant pages of the ATA opposition Statement on Deregulation Legislation is appended for the convenience of the Court.

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* The Teamsters Union (International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America) joined the ATA in opposing the bill.

Respectfully submitted,

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Dated: October 2, 1985

APPENDIX

APPENDIX

Before the

UNITED STATES SENATE
COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION

September 27, 1985
Washington, DC

Statement of the

AMERICAN TRUCKING ASSOCIATIONS

On

DEREGULATION LEGISLATION

Thomas J. Donohue
President and Chief Executive Officer

I. INTRODUCTION

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc. I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class

of motor carrier in the country: for-hire and private; regulated and exempt.

As stated in our oversight testimony three weeks ago, ATA vigorously opposes any legislation that would further deregulate the trucking industry at this time. ATA's opposition is not based on philosophical or ideological grounds. We oppose further deregulation for pragmatic reasons based on the difficult financial position of our industry and the potential negative impact on safety that additional deregulation would have.

• • • • • • • • • •

II. THE IMPACT OF FURTHER PROCEEDINGS

No one has a crystal ball to help predict the future. Had there been one, it might have been wise to delay passage of the 1980 Motor Carrier Act until after the 1982 recession. The recession was a major blow to the motor carrier industry. Other unanticipated developments that have occurred since 1980 are documented in the previous section. These problems are real and should be resolved before Congress enacts further economic deregulaton of the trucking industry.

We attempt in this section to project the effects of further economic deregulation as proposed by the Department of Transportation. We believe that elimination of antitrust immunity for collective ratemaking and all powers of the Interstate Commerce Commission (ICC) to establish reasonable parameters on motor carrier rates and services would have the following effects:

(1) Stimulate massive price wars;

(2) Increase ratemaking costs;

(3) Shrink working capital;

(4) Accelerate concentration in the less-than-truckload (LTL) general freight segment of the industry;

(5) Expand overcapacity in the truckload segment of the industry;

(6) Exacerbate the insurance crisis;

(7) Aggravate the tax burden;

(8) Force a renegotiation of the National Master Freight Agreement;

(9) Worsen the industry's multiemployer pension plan problem;

(10) Expand non-reciprocal operations by foreign carriers in the U.S.; and

(11) Eliminate the collection of essential motor carrier industry data.

Following are brief descriptions of each impact.

(1) Stimulate Massive Price Wars

Over the past five years, the trucking industry has experienced greater competitive pricing activitiy than ever before. The Motor Carrier Act of 1980 was designed to accomplish that purpose, particularly with provisions establishing an expanding zone of pricing flexibility free from the statutorily-imposed rate regulation by the ICC.

Motor carriers have not found it necessary to utilize the free zone since the ICC's change in attitude toward its rate responsibilities. Motor carriers have filed vigorously competitive rates and, daily, thousands of discounts are made independently from collectively-filed

(a) by adding the following new sentence at the beginning of subsection (a):

"Notwithstanding any other provision of law, the Interstate Commerce Commission has no jurisdiction over motor carriers of property except as provided in subsection (c)."; and

(b) by adding "of passengers" after "over transportation" in subsection (a);

(c) in subsection (b) by striking "10922(c)(2)" each time it appears and inserting "10922(b)(2)" in lieu thereof; and

(d) by adding at the end thereof the following new subsection:

"(c) The Commission shall retain jurisdiction over a motor common carrier providing transportation of household goods for the purposes of sections 10934, 11341, and 11342 until three years after the effective date of this act."

* * * *

RATES, TARIFFS, AND VALUATIONS

Sec. 22. Section 10705 of title 49, United States Code, is amended—

(a) in subsection (a)(1) by striking "(except a motor common carrier of property)";

(b) by striking subsections (b)(1) and (b)(2);

(c) by redesignating subsections (c) through (g) as subsections (b) through (f);

(d) in subsection (b) as redesignated, by striking the comma after "rail carrier" and inserting "or" in lieu thereof and by striking ", or motor common carrier of property" in the second sentence;

(e) in subsection (e) as redesignated by subsection (c) of this section by striking "or (b)";

(f) in subsection (f) as redesignated by subsection (c) of this section by striking "(f)" after "subsection" and inserting "(e)" in lieu thereof; and

(g) by striking subsection (h).

Sec. 23. Section 10706 of title 49, United States Code, is amended—

(a) in subsection (a)(2)(A) by striking "(c)(1)(B)-(E)" and inserting "(d)(1)(B)-(E)" in lieu thereof;

(b) by striking subsection (b)(3)(D) and by redesignating subsections (b)(3)(E) through (b)(3)(H) as subsections (b)(3)(D) through (b)(3)(G); and

(c) by striking subsection (b)(4) and by redesignating subsection (b)(5) as subsection (b)(4).

Sec. 24. Section 10708 of title 49, United States Code, is amended—

(a) in subsection (d)(1) by striking "motor common carrier of property or";

(b) in subsections (d)(1)(A) and (d)(1)(B) by striking "carrier" each time it appears and inserting "freight forwarder" in lieu thereof;

(c) in subsection (d)(2) by striking "motor common carriers of property or"; and

(d) in subsection (d)(2)(B)(i) by striking "carriers or".

* * * *

Sec. 36. Section 10762 of title 49, United States Code, is amended—

(a) in subsection (a)(1) by striking the last sentence; and

(b) by striking subsection (g).

Sec. 37. Section 10766 of title 49, United States Code, is amended in subsection (b) by striking ", providing transportation subject to the jurisdiction of the Commission under subchapter II of that chapter,".

Sec. 38. The analysis of chapter 107 of title 49, United States Code, is amended—

(a) by striking

"10732. Food and grocery transportation." and inserting in lieu thereof

"10732. Backhaul allowances.";

(b) by striking

"10733. Rates for transportation of recyclable materials." and inserting in lieu thereof

"10733. Repealed."; and

(c) by striking

"10735. Household goods rates—estimates; guarantees of services.";

and inserting in lieu thereof

"10735. Repealed.".

* * * *

Enclosure 9

Section by Section Analysis of the Trucking Deregulation Act of 1985

[Excerpt]

This bill eliminates all federal economic regulation of the trucking industry; it eliminates entry controls and rate regulation; eliminates antitrust immunity for collective ratemaking; eliminates tariff publication requirements; eliminates the "common carrier obligation"; and transfers jurisdiction for consumer protection in household goods operations to the Federal Trade Commission.

There is vigorous competition not only within the for-hire motor carrier industry, but also from other elements of the transportation sector, such as private trucking, freight forwarders, and railroads, and potential competition from independent owner-operators, as well. Hence, there is no need for continued regulation of the trucking industry.

Section 1

The short title of the bill is the "Trucking Deregulation Act of 1985."

Section 2

The purpose of the bill is to reduce unnecessary and burdensome government regulations and to insure the competitiveness and efficiency of transportation by motor carriers of property in the United States.

Section 3

This section states the findings of Congress. It sets out that the statutes governing Federal regulation of motor carriers of property are outdated and must be revised to reflect transportation needs and realities of the present and future; and that government regulation has resulted in operating inefficiencies and anticompetitive pricing and should be reduced.

Section 4

This section amends the transportation policy of the Interstate Commerce Act to reflect the elimination of economic regulation of motor carriers of property.

Section 5

This section amends section 10102(12) of title 49 USC by further defining motor carrier as used in subtitle IV of title 49 as only meaning a motor carrier of passengers. It clarifies that the intent of this Act is to remove Interstate Commerce Commission regulation of motor carriers of property.

Section 6

This section deletes the procedural guidelines of section 10322 of title 49 USC for handling applications involving motor carrier transportation incidental to trailer on flatcar or container on flatcar service by rail or registration certificates for foreign motor carriers. This is a conforming change, since this legislation eliminates the necessity for applying to the Interstate Commerce Commission for any kind of motor carrier authority.

Section 7

This section amends section 10521 of title 49 USC to remove Interstate Commerce Commission jurisdiction over motor carriers of property, with one limited exception regarding household goods carriers. This exception allows the Interstate Commerce Commission to maintain jurisdiction over motor carrier transportation of household goods for three years after the effective date of the Act, for the limited purposes of retaining special antitrust immunity for household goods van lines (so that they can continue to engage in certain business relationships with their own local agents) and of retaining the Interstate Commerce Commission's power to approve or disapprove pooling agreements between a van line and its

agents. This jurisdiction over household goods carriers is retained for three years in order to minimize possible disruption resulting from the eventual removal of all special antitrust immunity for household goods van line-agent relationships. The delayed effective date of removal of immunity will give van lines and their agents additional time to develop corporate business structures and relationships that do not require special antitrust immunity.

* * * *

Section 22

This section amends section 10705 of title 49 USC by removing the authority of the Interstate Commerce Commission over motor common carriers of property to prescribe through routes, joint classifications, joint rates, the division of rates, and the conditions under which those routes must be operated.

Section 23

This section amends section 10706 of title 49 USC by removing Interstate Commerce Commission jurisdiction for providing antitrust immunity to motor carriers of property. Under the provisions of section 83 of this legislation, elimination of antitrust immunity will occur on July 1, 1986. This section does not disturb antitrust immunity for motor carriers of passengers or other carriers.

Section 24

This section amends section 10708 of title 49 USC to remove Interstate Commerce Commission jurisdiction to investigate, suspend, revise, or revoke any rate of a motor common carrier of property on the grounds that such rate is unreasonably high or low. The "zone of rate freedom" provided by the Motor Carrier Act of 1980 would remain applicable only to freight forwarders.

* * * *

Section 36

This section amends section 10762 of title 49 USC by removing the requirement for motor carriers of property to publish, file, and keep tariffs open for public inspection.

Section 37

This section amends section 10766 by deleting the requirement that freight forwarders may only contract with Interstate Commerce Commission regulated motor carriers of property.

Section 38

This section makes changes in the analysis of Chapter 107 of title 49 to conform to the changes made in sections 19 through 37.